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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.885 OF 2006
in
COMPANY APPLICATION (L) NO.701 of 2000
IN
COMPANY PETITION NO.273 OF 1998

Sobhagymal Sanghvi .. Petitioner

vs

DSJ Finance Corporation Ltd ..
thr.Official Liquidator, Bombay High Court
and
1. DSJ Communication Ltd
2. Dataline Research Technologies (I) Ltd
3. Boom Trading and Investments

Mr.Santosh D.Raje for Petitioner in C.A. No.885/06

Ms.K.V.Gautam,Dy.O.L.present
Mr.R.D.Suvarna in C.A.No.330/06

CORAM : DR.D.Y.CHANDRACHUD, J

DATED : 15th June, 2007

P.C.

1. Company Application No.330 of 2006 has been taken out by C.D.Securities Services Network Ltd, a security agency for a direction to the Official Liquidator to pay an amount of Rs.7,78,302/-, being security charges for the period 6th May, 1999 to 31st January, 2006 and to allow the agency to withdraw its security personnel. The security personnel have been deployed at a property which is described as A/23, 2nd Floor, Green Park, New Delhi. The second Company Application (Company Application No.420 of 1007 has been taken out on behalf of three applicants for a direction to the

Official Liquidator to remove the seal from the premises. The Official Liquidator took possession of the aforesaid premises on 6th May, 1999. The original respondent DSJ.Finance Corporation Ltd was ordered to be wound up on 29th September, 1998. An application (Company Application No.420 of 2007 or original Company Application (Lodging) No.701 of 2000) was taken out by the three applicants (1) D.S.J.Communication Ltd (2) Dataline Research Technologies India Ltd (3) Boom Trading and Investments for a direction to the Official Liquidator to remove the seal from the premises. In the affidavit in support it was averred that by a communication dated 11th January,,2000 to the Official Liquidator the applicants had drawn the attention of the liquidator to the fact that the premises did not belong to the company in liquidation but to the applicants. In pursuance of a letter of the Official Liquidator demanding the documents of title, the applicants by a communication dated 15th February, 2000 furnished the registered documents on the basis of which the applicants claimed their right, title and interest to the premises.

2. On 16th August, 2002 a learned Single Judge of this Court (S.J.Vajifdar, J) noted that in the affidavit in support of the Company Application the applicants had set out in detail the manner in which the applicants had acquired rights in respect

of the premises and there was nothing on record to indicate to the contrary. An interim order was passed by the learned Single Judge directing the Official Liquidator to deseal the premises but while doing so it was observed that the Official Liquidator shall permit the applicants to take possession of the premises subject to each of them filing an undertaking not to dispose of, alienate, encumber or create any third party rights and/or interest in or upon the aforesaid premises till further orders of the Court. Certain consequential directions were issued for storage of the goods referred to in the report of the Official Liquidator.

3. Now, it is an admitted position before this Court that the applicants did not immediately or for that matter within a reasonable time file an affidavit of undertaking as directed in the order of 16th August, 2002 that they would not alienate or create any third party rights in the premises. The Official Liquidator thereupon moved a report before the learned Company Judge on 19th February, 2003 seeking ratification of his action in appointing security guards and for a direction to the applicants in Company Application No. 420 of 2007 to pay security charges until the Company Application was disposed of or until possession was taken from the liquidator in pursuance of the ad interim order whichever was earlier. The

liquidator's report contained a specific statement that notice of the report was furnished inter alia to the applicants. Dr.Justice S.Radhakrishnan (then sitting as a Company Judge) allowed the report of the liquidator in terms of prayer clause (a). As a result, the action of the liquidator in appointing security guards was ratified and the applicants were directed to pay security charges until they took possession of the premises. A Copy of the order of the Courtwas furnished to the applicant's advocate by a letter dated 11th November, 2003 with a request to comply with the orders of the court. The applicants however, did not deposit the charges. The applicants filed an undertaking as directed in the order of this court dated 16th August, 2002 not to create any third party rights only on 19th December, 2003 which was nearly 16 months after the date of the order of the Court. However, the direction contained in the order of Dr. Justice S.Radhakrishnan dated 8th October, 2003 for depositing security charges was not complied with. Even after the undertaking was filed, there is nothing on record to indicate that intimation was furnished to the Official Liquidator of the fact of the filing of the undertaking in court. On 24th March, 2004 the Official Liquidator was for the first time informed that an affidavit on behalf of the applicants was filed in Court. Though the letter states that a copy was served on the liquidator, learned counsel appearing on behalf

of the applicants fairly stated before this Court that the applicants are unable to substantiate their contention that a copy of the affidavit was served on the liquidator after it was filed. Therefore, at any rate it was only on 24th March, 2004 that the applicants chose to intimate the Official Liquidator about the filing of the undertaking. In fact, even the undertaking was filed after a significant delay after the order of this court dated 16th August, 2002.

4. The security charges payable to the security agency have remained unpaid. There can be absolutely no reason or justification for non-payment of the security charges which have been verified by the Official Liquidator to be due and payable. The liquidator asserts that the liability to pay the security charges must lie with the applicants while on the other hand the applicants contend that they are not liable to pay the security charges in the first place since the premises in question did not belong to the company in liquidation but to the applicants themselves. Now, in so far as this contention of the applicants is concerned, it is apparent from the order of this Court dated 16th August, 2002 that permission as granted to the applicants to receive the possession of the premises subject to their filing an undertaking as directed. The applicants have only themselves to blame for the delay that took place

on their part in filing an undertaking in compliance with the order of the Court dated 16th August, 2002. An affidavit was filed only on 19th December, 2003. Immediately after the filing of the undertaking, it was for the applicants to move the Official Liquidator with a request to remove the seal on the premises by producing a copy of the affidavit which was to be filed on the record of the Court. As already noted above, the applicants have fairly stated before this Court through counsel that there is nothing to indicate that the Official Liquidator was served with a copy of the affidavit or that at an earlier point of time, the Official Liquidator was made aware of the filing of such an affidavit before 24th March, 2004. In these circumstances, the applicants are liable to pay the security charges until 24th March, 2004. Fairly,the liability to do so has not been disputed before the Court by counsel appearing on behalf of the applicants. There is however, merit in the submission urged on behalf of the applicants that the liability to pay the security charges cannot be foisted on them for any period after 24th March, 2004. The Official Liquidator ought to have taken immediate steps for desealing the premises in compliance with the order of the learned Single Judge dated 16th August, 2002 after his attention was drawn on 24th March, 2004 to the lodgment of the affidavit of undertaking. At any rate, the Official Liquidator would have known immediately

thereafter on taking inspection of the records that such an undertaking had been filed.

5. In so far as the relief of desealing the premises is concerned, the applicants in Company Application No. 420 of 2007 have indicated in para 13 the details of the transactions on the basis of which the premises were acquired by them between May and August, 1995 by a registered instrument for valuable consideration. It has been averred that the company in liquidation had occupied only an area admeasuring 60 sq.ft till March, 2007 after which the premises were vacated. The correspondence on record would show that by a letter dated 15th February, 2000 the Official Liquidator was apprised of the documentary evidence on the basis of which the applicants claim their interest. The Official Liquidator has upon scrutiny of the documents not been in a position to urge to the contrary.

6. In the circumstances, it would be appropriate and proper that the Company Applications are disposed of in the terms of following directions :

(i) Company Application No. 420 of 2007 is made absolute in terms of prayer clause (a) subject to the applicants, in terms of the statement made before this court depositing with the Official Liquidator within a period of 12 weeks from today the outstanding security charges upto 24th March, 2004. The Official Liquidator shall bear the rest of the security charges from out of the common fund subject to his entitlement to be

recouped out of the assets of the company in liquidation together with interest at the rate of 9 % p.a.;

(ii) The outstanding security charges shall be paid over to the applicants in Company Application No.330 of 2006 by the Official Liquidator within a period of six weeks of the date or deposit.

(iii) The Official Liquidator shall dispense with the service of the security agency immediately against desealing of the premises.

The Company Applications are disposed of accordingly. No order as to costs.

(Dr.D.Y.Chandrachud, J)